



U.S. Army Garrison Kaiserslautern

Facts About Mediation in the Department of the Army

Mediation is a form of Alternative Dispute Resolution (ADR) that is offered by the servicing EEO office as an alternative to traditional counseling or the investigative process. Mediation is an informal process in which a neutral third party assists the opposing parties to reach a voluntary, negotiated resolution of a claim of discrimination. The decision to mediate is completely voluntary for the aggrieved employee and the employer. Mediation gives the parties the opportunity to discuss the issues raised in the complaint, creates a safe environment for discussion, clears up misunderstandings, finds areas of agreement and, ultimately, incorporates those areas of agreement into resolution. A mediator does not resolve the claim or impose a decision on the parties. Instead, the mediator helps the parties to agree on a mutually acceptable resolution. The mediation process is strictly confidential. Information disclosed during mediation will not be revealed to anyone, including other EEO employees.

How Mediation Works

An EEO official (EEO Manager/ Specialist) will ask the employee during the pre-complaint interview, if mediation is offered, would they be willing to participate. A mediation session conducted by a trained and experienced mediator is scheduled. While it is not necessary to have an attorney in order to participate, either party may choose to do so. It is important that persons attending the mediation session have the authority to resolve the dispute. If mediation is unsuccessful, the aggrieved employee is given the right to file a formal complaint.

Advantages of Mediation

- Mediation, available at no cost to the parties, is an efficient process that saves time and money. Successful mediation avoids a time consuming investigation and achieves a prompt resolution of the claim. The majority of mediations are completed in one session, which usually lasts for one to five hours.
- Mediation is fair. Mediators are neutral third parties who have no interest in the outcome. Their role is to help the parties resolve the claim. Parties have an equal say in the process and decide settlement terms. . . not the mediator.
- Mediation is a confidential process. The sessions are not tape-recorded or transcribed. Notes taken during the mediation by the mediator are discarded and all parties sign an agreement of confidentiality.
- Settlement agreements secured during mediation do not constitute an admission by the employer of any violation of laws enforced by the EEOC. There is no determination of guilt or innocence in the process.

- Mediation avoids lengthy and unnecessary litigation. Mediation usually occurs early in the charge process, and many mediations are completed in one meeting. Legal or other representation is optional but not required.
- Mediation fosters a problem solving approach to complaints and workplace disruptions are reduced. Even if the claim is dismissed by EEO Office, the underlying problems may remain, affecting others in the workforce and human resources staff.
- Parties share information, which can lead to a better understanding of issues affecting the workplace. Enhanced communications can lead to mutually satisfactory resolutions.

Core Principles of Mediation

- Voluntariness. The parties must enter into mediation or another ADR process knowingly and voluntarily. Participation in ADR is voluntary for the complaining party. Once the ADR team (EEO Officer, CPAC and Legal Representative) has decided to offer ADR and the employee elects to participate, it is considered that both parties (employee and manager) have knowingly and voluntarily entered in ADR. Managers have an affirmative duty to cooperate in the process. Either party has an option to “opt out” of ADR at any point prior to resolution and for any reason.
- Neutrality. An ADR neutral has no official, financial or personal interest in the issue at controversy, or in the outcome of the dispute. Employees of the EEO, CPAC, CPOC, and SJA/legal offices may not serve as ADR neutrals within their serviced areas. The ADR neutral or mediator should not be acquainted with either party or be an employee from the same directorate or unit as the complaining party of the management official.
- Confidentiality. Any information disclosed in the ADR process will remain confidential, whether or not ADR is successful. However, any threat of physical harm or disclosure of waste, fraud, abuse or any other legal activity will be exempt from confidentiality and will be reported to the appropriate officials.
- Enforceability. If a resolution is achieved, the terms of the resolution will be set forth in written negotiated settlement agreement that is binding upon both parties.

The mediator will (1) Listen to all sides of the problem, (2) Ask questions about what happened in order to get the facts, (3) Assist the parties in developing possible solutions (4) Does not take sides, (5) Respect the confidentiality of all parties and (6) Does not place blame.